

November 18, 2005

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Dear Mike:

Weyerhaeuser Company's comments on the proposed WAC 173-333 *Persistent Bioaccumulative Toxins* regulation are presented in this letter. We also endorse the comment letters to be submitted by the Association of Washington Business, Northwest Pulp and Paper Association, and The National Council for Air and Stream Improvement.

1. WAC 173-333-100 *Introduction* and -110 *What is the purpose of this chapter* – These sections prematurely conclude that PBTs are, in fact, threatening human health and the environment in Washington. The PBT chemicals listed in the WAC 173-333-320 process will, by definition, have characteristics which threaten HH/E. However, it is not until the Chemical Action Plan development activities in WAC 173-333-410 and -420 are underway that information on the uses, releases, levels and, ostensibly, the HH/E impacts in Washington, are even examined.

WAC 173-333-100 and -110 should be amended to acknowledge this reality. This can be accomplished by adding the word “may” at appropriate locations in sections -100 and -110; i.e., “are chemicals that may pose a unique threat...”, “Because of the unique threat that these PBTs may pose,...”, “to identify persistent bioaccumulative toxins that may pose human health...”.

2. WAC 173-333-200 Definition of *Carcinogen* – The initial phrase “means a chemical or chemical group that is known or suspected to increase the probability of developing cancer” is ambiguous and is usurped by the specificity of the remainder of the definition. This initial phrase should be deleted.
3. WAC 173-333-200 Definition of *Chemical Group* – With the decision in this proposed regulation to list and provide a technical rational for individual PBTs; i.e., a *Chemical*, the use of the term *Chemical Group* has lost relevance. Stated differently, there are no proposed elements of this regulation where a required action is differentiated for a *Chemical* and a *Chemical Group*. The *Chemical Group* term is redundant and, in the interests of clarity, could be removed from the rule.
4. WAC 173-333-200 Definition of *Neurotoxicant*. The initial phrase “means a chemical or chemical group that is known or suspected to cause adverse changes in

the structure or function of the central and/or peripheral nervous system” should be deleted. The remainder of the definition provides a more specific and meaningful definition of the term.

5. WAC 173-333-200 Definition of *Developmental or reproductive toxicant* – The initial phrase “means a chemical of chemical group that is known or suspected to cause adverse effects on development of reproduction” is unnecessary and should be deleted. The remainder of the definition is more specific and functional, and will suffice.
6. WAC 173-333-320(1) *Purpose* and -320(2) *Criteria for identifying PBTs* – These subsections commit the agency to evaluate “credible scientific information” to “determine” whether a chemical should be placed on the PBT list. No details are presented in rule language to describe how credible scientific information will be evaluated to determine whether a specific numeric PBT criterion has been exceeded.

“The Summary of Technical Background Information for the Proposed PBT List,” WDOE, October 2005 (revised draft), presents a compilation of (what is presumably) “credible scientific information” on chemical persistence, bioaccumulation and toxicity. A “sound public policy” and good science practice would be to utilize an average or mean of the credible data or model result for comparison against the P or B or T threshold criteria. To do otherwise (for example, to intentionally select an extreme value in the data set as the basis for decision-making) is to ignore equally credible scientific information. To this end, Weyerhaeuser suggests that -320(2) be amended to read:

(2) Criteria for identifying PBTs. A chemical ~~or chemical group~~ will be included on the PBT list if ecology determines it meets each of the following criteria: All credible scientific information will be equally weighted and considered in making this determination.

Ecology should double-check to ensure the mean or median of the credible scientific information is being used for comparisons against the P or B or T numeric criterion, and adjust the proposed list if necessary.

This is an important and fundamental issue. WAC 173-333-140 *Administrative principles* commits to a transparent regulatory process with “clear and understandable descriptions and rationale for decisions...” Ecology’s policy intentions and methodology for evaluating credible scientific information should be clearly presented in -320(1) and (2).

7. WAC 173-333-310(2) and (3) *Lead and Cadmium* – These elements are not ready for placement on the PBT list. Once the scientific evaluation is completed and the ecological significance of these elements is understood, Ecology can initiate a regulatory process under -320 or -340 as appropriate. To include these elements in the regulation with a tentative or place-holder status is simply inappropriate.

8. WAC 173-333-410(2)(b) *Ecology will not prepare CAPs* – Subsection (2)(b) is a very practical acknowledgement that there could be valid reasons why the effort and expense of CAP development is not warranted. Still, the wording of subsections (2)(b)(i) and (ii) and (iii) is so narrow that it might literally preclude a smart decision not to proceed to a CAP. Weyerhaeuser believes (2)(b)(iii) should be adjusted to read

(iii) There are no ~~available~~ feasible opportunities for reducing or phasing out the uses, releases or exposures of the PBT beyond levels required under other federal or state laws or regulations.

9. WAC 173-333-420(1)(g) *Implementation Steps* – It should be recognized that other state and/or local agencies might be better positioned to implement the CAP plan. It should also be acknowledged that additional statutory authority and regulation development may be required to equitably implement a CAP. Consequently, subsection (g) should be amended and supplemented:

(g) Implementation steps. A description of the steps ecology and other state or local agencies will take to implement the CAP, including a description of:

(vi) Any required legislative authority and recommended regulatory actions and how ecology will pursue them,

(v) A projection of the resources and necessary budget required of other state agencies and local governments.

10. WAC 173-333-420(2) *Regulatory consistency* – Subsection (2)(a) prohibits consideration of CAP recommendations not authorized by federal or state law. Many federal and state environmental laws exempt public or household activities from compliance with regulations implementing those laws. Yet, individual decisions and activities by citizens; i.e., collectively, “the public,” could represent significant sources of PBT releases. (Good examples would be the emission of chlorinated dioxins and furans, and a variety of PAHs, arising from individual choices to burn garbage containing plastic and wood, in burn barrels and fireplaces.) If Ecology is serious with the effort to reduce the production, uses, and exposures to PBTs there could well be CAP recommendations which address the public contribution. To the extent state and local governments lack statutory authority to implement those recommendations, it should be noted by Ecology.

Thank you for the opportunity to present these comments.

Sincerely,

Ken Johnson
Washington Regulatory Affairs Manager